

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

Barry Sanders, M.D.)

Case No. 800-2017-032373

**Physician's and Surgeon's)
Certificate No. G 39467)**

**Respondent)
_____)**

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 15, 2018.

IT IS SO ORDERED February 13, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 
**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2017-032373

11 **BARRY SANDERS, M.D.**

12 6021 Warm Mist
13 Dallas, TX 75248

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate No. G 39467

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Xavier Becerra, Attorney General of the State of California, by Alice W. Wong,
23 Deputy Attorney General.

24 2. Respondent Barry Sanders, M.D. (Respondent) enters into this Stipulated Settlement
25 and Disciplinary Order for Public Reprimand with the advice and counsel of his Texas counsel,
26 Dana Morgan of Steed Law Firm, whose address is: 250 East Evergreen Street, Sherman, Texas
27 75090.
28

1 3. On or about June 18, 1979, the Board issued Physician's and Surgeon's Certificate
2 No. G 39467 to Barry Sanders, M.D. (Respondent). The Physician's and Surgeon's Certificate
3 was expired at all times relevant to the charges brought in Accusation No. 800-2017-032373, but
4 has been renewed and is now current, and will expire on September 30, 2018, unless renewed.

5 **JURISDICTION**

6 4. August 14, 2017, Complainant Kimberly Kirchmeyer, in her official capacity as the
7 Executive Director of the Board, filed Accusation No. 800-2017-032373 (Accusation) against
8 Respondent. The Accusation and all other statutorily required documents were properly served
9 on Respondent and he timely filed his Notice of Defense.

10 5. A copy of Accusation No. 800-2017-032373 is attached as exhibit A and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with his Texas counsel, and
14 understands the charges and allegations in Accusation No. 800-2017-032373. Respondent has
15 also carefully read, fully discussed with his Texas counsel, and understands the effects of this
16 Stipulated Settlement and Disciplinary Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent having the benefit of advice from his Texas counsel hereby voluntarily,
24 knowingly, freely and intelligently waives and gives up each and every right set forth above.

25 **CULPABILITY**

26 9. Respondent agrees that, at an administrative hearing, Complainant could establish a
27 *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-
28 2017-032373 and that he has thereby subjected his Physician's and Surgeon's Certificate to

1 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
2 discipline as set forth in the Disciplinary Order below.

3 **CONTINGENCY**

4 10. This stipulation shall be subject to approval by the Medical Board of California.
5 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
6 Board of California may communicate directly with the Board regarding this stipulation and
7 settlement, without notice to or participation by Respondent or his Texas counsel. By signing the
8 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
9 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
10 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
11 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
12 action between the parties, and the Board shall not be disqualified from further action by having
13 considered this matter.

14 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
16 signatures thereto, shall have the same force and effect as the originals.

17 12. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. G 39467
22 issued to Respondent Barry Sanders, M.D. is hereby publicly reprimanded pursuant to California
23 Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in
24 connection with Respondent's actions as set forth in Accusation No. 800-2016-026806, is as
25 follows:
26

27 On September 23, 2014, you verbally consulted with a patient's attending physician on the
28 care and treatment of the patient but failed to properly document the patient's medical file.

1 **B. MEDICAL RECORD COURSE**

2 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll
3 in a Medical Record course approved in advance by the Board or its designee. Respondent
4 shall provide the approved course provider with any information and documents that the
5 approved course provider may deem pertinent. Respondent shall participate in and
6 successfully complete the classroom component of the course not later than six (6) months
7 after Respondent's initial enrollment. The Medical Record course shall be at Respondent's
8 expense and shall be in addition to the Continuing Medical Education (CME) requirements
9 for renewal of licensure.
10

11 A Medical Record course taken after the acts that gave rise to the charges in the
12 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
13 or its designee, be accepted towards the fulfillment of this condition if the course would have
14 been approved by the Board or its designee had the course been taken after the effective date of
15 this Decision.
16

17 Respondent shall submit a certification of successful completion to the Board or its
18 designee not later than 15 calendar days after successfully completing the course, or not later than
19 15 calendar days after the effective date of the Decision, whichever is later.

20 Respondent understands that failure to submit and/or complete the Medical Record
21 course, as set forth above, would constitute unprofessional conduct and grounds for further
22 disciplinary action. If Respondent fails to enroll, participate in, or successfully complete the
23 prescribing course within the designated time period, Respondent shall receive a notification from
24 the Board or its designee to cease the practice of medicine within three (3) calendar days after
25 being so notified.
26
27
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1 In consideration for his agreement to complete the Medical Record course, as set forth
2 above, Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as
3 set forth above in Paragraph 12(A).

4
5 **ACCEPTANCE**

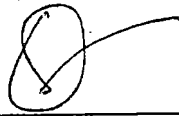
6 I, BARRY SANDERS, M.D., have carefully read this Stipulated Settlement and
7 Disciplinary Order and, having the benefit of my Texas counsel, enter into it freely, voluntarily,
8 intelligently and with full knowledge of its force and effect on my Physician's and Surgeon's
9 Certificate No. G 39467. I fully understand that, after signing this stipulation, I may not
10 withdraw from it, that it shall be submitted to the Medical Board of California for its
11 consideration, and that the Board shall have a reasonable period of time to consider and act on
12 this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon
13 formal acceptance by the Board, I shall be publically reprimanded by the Board and shall be
14 required to comply with the terms and conditions of the Disciplinary Order set forth above. I;
15 also, fully understand that any failure to comply with the terms and conditions of the Disciplinary
16 Order set forth above shall constitute unprofessional conduct and that my Physician's and
17 Surgeon's Certificate No. G 39467 will be subject to further disciplinary action.

18
19 DATED: 12/15/17


BARRY SANDERS, M.D.
Respondent

21 I have read and fully discussed with Respondent Barry Sanders, M.D. the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24 DATED: 12/18/17


DANA MORGAN
STEED LAW FIRM
Texas Counsel for Respondent


ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 12/19/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2017203769

Exhibit A

Accusation No. 800-2017-032373

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA. 94102-7004
Telephone: (415) 703-5597
6 Facsimile: (415) 703-5480
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 14 20 17
BY Sara Pacion ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 800-2017-032373

13 Barry Sanders, M.D.
14 6021 Warm Mist
15 Dallas, TX 75248

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. G39467,

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about June 18, 1979, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G39467 to Barry Sanders, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate is in delinquent status, having expired on September 30, 2014, and has not been
26 renewed.
27
28

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

6. Section 141 of the Code states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

1 CAUSE FOR DISCIPLINE

2 (Discipline, Restrictions, or Limitation Imposed by Another State)

3 7. On or about July 22, 2016, the Texas Medical Board filed a formal Complaint against
4 Respondent, alleging Respondent failed to maintain adequate medical records and failed to
5 practice medicine in an acceptable professional manner consistent with public health and welfare.
6 On or about March 3, 2017, the Texas Medical Board issued an Agreed Order on Formal Filing
7 which was agreed and signed by Respondent and included the following terms and conditions:
8 completion of risk management course and physician/patient communication course; Respondent
9 shall provide a copy of the Agreed Order to all hospitals and health care entities where
10 Respondent has privileges or practices; fully comply with the Board and Board staff for
11 compliance of the Agreed Order; and comply with all statutes relating to Respondent's practice.

12 A copy of the formal Complaint and Agreed Order on Formal Filing issued by the Texas
13 Medical Board are attached as Exhibit A.

14 8. Respondent's conduct and the action of the Texas Medical Board as set forth in
15 paragraph 7, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the
16 Code.

17
18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Medical Board of California issue a decision:

21 1. Revoking or suspending Physician's and Surgeon's Certificate Number G39467,
22 issued to Barry Sanders, M.D.;

23 2. Revoking, suspending or denying approval of Barry Sanders, M.D.'s authority to
24 supervise physician assistants and advanced practice nurses;

25 ///


26 ///

27 ///

1 3. Ordering Barry Sanders, M.D., if placed on probation, to pay the Board the costs of
2 probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.
4

5 DATED: August 14, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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10 SF2017203769
11 accusation - mbc.rtf
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Exhibit A

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-16 5251 MD
TEXAS MEDICAL LICENSE NO. F-2434

IN THE MATTER OF THE
COMPLAINT AGAINST
BARRY SANDERS, M.D.

BEFORE THE

TEXAS MEDICAL BOARD

COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

The Staff of the Texas Medical Board (the Board) files this Complaint against Barry Sanders, M.D. (Respondent), for alleged violations of the Medical Practice Act (the Act), Title 3; Subtitle B, Texas Occupations Code, and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Respondent failed to meet the standard of care when he failed to timely evaluate a patient with a suspected stone in the bile duct. Specifically, Respondent, who was advised that the patient had an elevated prothrombin time (PT), relied upon a review of the computer records and did not perform an in-person evaluation of the patient in spite of being contacted for a consult. A second physician later determined the patient was stable enough to attempt an ERCP procedure to address the stone. The patient died following the procedure. Although Respondent claims to have consulted with other physicians regarding the patient's care, his medical records do not adequately documents consultations, advice or medical decision making for the patient.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. F-2434, which was originally issued by the Board on August 27, 1978. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences (ISC). The Board complied with all procedural rules, including but not limited to, Board Rules 182 and 187, as applicable.

3. No agreement to settle this matter has been reached by the parties.

4. All jurisdictional requirements have been satisfied.

5. The filing of this Complaint and the relief requested are necessary to protect the health and public interest of the citizens of the State of Texas, as provided in Section 151.003 of the Act.

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

A. General Statutes and Rules:

1. Section 164.007(a) of the Act requires that the Board adopt procedures governing formal disposition of a contested case before the State Office of Administrative Hearings.

2. 22 TEX. ADMIN. CODE, CH. 187 sets forth the procedures adopted by the Board under the requirement of Section 164.007(a) of the Act.

3. 22 TEX. ADMIN. CODE, CH. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 TEX. ADMIN. CODE, CH. 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 TEX. ADMIN. CODE, CH. 155.507, requires the issuance of a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law.

6. Section 164.007(a) of the Act, Board Rule 187 et. seq. and Board Rule 190 et. seq., provide the Board with the sole and exclusive authority to determine the charges on the merits, to impose sanctions for violation of the Act or a Board rule, and to issue a Final Order.

B. Specific Violations Cited:

Respondent has violated one or more of the following provisions of the Act:

1. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to maintain an adequate medical record as further defined by Board Rule 165.1.

2. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by Board Rules:

- a. 190.8(1)(A) failure to treat a patient according to the generally accepted standard of care;
- b. 190.8(1)(B) negligence in performing medical services;
- c. 190.8(1)(C) failure to use proper diligence in one's professional practice;
- d. 190.8(1)(D) failure to safeguard against potential complications;

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. The Patient, an 88 year old female, was admitted to Flower Mound hospital on September 23, 2014.

2. On September 24, 2014 a Magnetic Resonance Cholangiopancreatography (MRCP) was performed on the patient and it revealed a seven millimeter stone in the common bile duct. This finding was consistent with the patient's reported symptoms.

3. Respondent was consulted following the results of the MRCP on the afternoon of September 24, 2014. The treatment plan called for an endoscopic retrograde cholangiopancreatogram (ERCP) to remove the stone on September 25, 2014. Without evaluating the patient, Respondent declined to perform the procedure as he classified the patient as too high risk.

4. Respondent's failure to evaluate the patient prior to declining to perform the ERCP violated the Act and Board Rules. Specifically:

Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing

medical services; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(D), failure to safeguard against potential complications;

5. Respondent claims to have consulted with other physicians involved in the patient's care, and claims to have offered advice and made justifiable medical decisions. However, the medical records for the patient do not support Respondent's claims.

6. Respondent's failure to maintain a complete and accurate medical record for the Patient violated the Act and Board Rules. Specifically:

Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of Board rule 165.1 requiring the maintenance of an adequate medical record.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: 1) patient harm; 2) intentional, premeditated, knowing, or grossly negligent act constituting a violation; 3) other relevant circumstances increasing the seriousness of the misconduct.

Board staff is aware of no mitigating factors that apply and demand that Respondent submit proof to substantiate any alleged mitigating factors.

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, A DEFAULT ORDER MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VII. PRAYER

Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act as set forth in this Complaint.

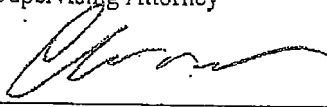
Respectfully submitted,

TEXAS MEDICAL BOARD

CHRISTOPHER PALAZOLA
Litigation Manager

SUSAN RODRIGUEZ
Supervising Attorney

By:


Christopher M. Palazola
Attorney-in-Charge
Texas State Bar No. 24060379
Telephone: (512) 305-7096
FAX: (512) 305-7007
333 Guadalupe, Tower 3, Suite 610
Austin, Texas 78701

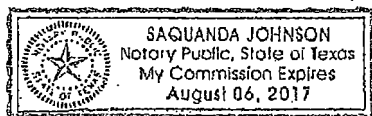
THE STATE OF TEXAS

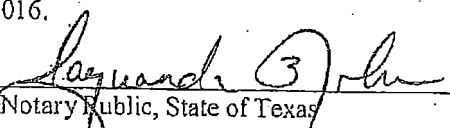
COUNTY OF TRAVIS

§
§
§

SUBSCRIBED AND SWORN to before me by the said Christopher M. Palazola, J.D., on

July 22nd, 2016.




Notary Public, State of Texas

Filed with the Texas Medical Board on July 8, 2016.

Mari Robinson
Mari Robinson, J.D.
Executive Director
Texas Medical Board

STATE OF TEXAS
COUNTY OF TRAVIS

I, Jessica Parras certify that I am an official
assistant custodian of records for the Texas Medical Board
and that this is a true and correct Copy of the original, as it
appears on the file in this office.

Witness my official hand and seal of the BOARD.

This 12th Day of May, 2017
Jessica Parras
Assistant Custodian of Records

LICENSE NO. F2434

IN THE MATTER OF
THE LICENSE OF
BARRY SANDERS, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER ON FORMAL FILING

On the 3 day of March, 2017, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Barry Sanders, M.D. (Respondent).

On July 22, 2015, Respondent appeared in person, with counsel, Vernon L. Krueger, J.D., at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were George Willeford, III, M.D., a member of the Board, and Sharon J. Barnes, M.B.A., a member of a District Review Committee (Panel). Margie Johnson represented Board Staff.

Following the ISC, the matter did not resolve and the case was filed at SOAH under Docket Number 503-16-5256. The case was set for mediation on January 20, 2017 with Board member Margaret McNeese, M.D. Respondent continued to be represented by Vernon L. Krueger. Christopher M. Palazola and Nancy Elmilady represented Board staff.

BOARD CHARGES

Board Staff initially charged that Respondent did not meet the standard of care regarding one patient.

BOARD HISTORY

Respondent has not previously received a disciplinary order from the Board.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Agreed Order.

FINDINGS

The Board finds the following:

1. General Findings:

- a. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the Act) or the Rules of the Board.
- b. Respondent currently holds Texas Medical License No. E2434. Respondent was originally issued this license on August 27, 1978. Respondent is also licensed to practice in California.
- c. Respondent is primarily engaged in the practice of Gastroenterology. Respondent is board certified by the American Board of Internal Medicine, a member of the American Board of Medical Specialties.
- d. Respondent is 69 years of age.

2. Specific Panel Findings:

- a. Respondent was consulted regarding an elderly patient for a stone in the common bile duct.
- b. Respondent conferred verbally with the attending physician in response to the consult.
- c. The patient's records did not include a written consult from Respondent.

3. Mitigating Factors:

In determining the appropriate sanction, the Panel considered the following mitigating factors:

- a. Respondent had all the records available for his review at the time he made the decision.
- b. Respondent's determination not to perform the ERCP may have been justified if the rationale had been documented in Respondent's medical record for the patient.

- c. Respondent relied upon his verbal communication with the attending physician and reached an agreement, based upon the patient's abnormal lab values, to obtain a hematology consult prior to proceeding with the ERCP.
- d. Respondent cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent as further defined by Board Rule 165.1, failure to maintain an adequate medical record.
3. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board Rule.
4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.
5. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 8 hours of continuing medical education ("CME") approved for Category I credits by the American Medical Association, divided as follows: 4 hours in the topic of risk management, and 4 hours in the topic of physician - patient communications, each approved in writing, in advance by the Executive Director or their designee. To obtain approval

for each course, Respondent shall submit in writing to the Compliance Department information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Department on or before the expiration of the time limit set forth for completion of the course. The CME requirements set forth in this paragraph shall be in addition to all other CME required for licensure maintenance.

2. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of first being contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation that the Order was delivered to all such facilities. Such documentation should include proof of delivery.

3. Respondent shall comply with all of the provisions of the Act and other statutes regulating the Respondent's practice.

4. Respondent shall cooperate fully with the Board and Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigating, reviewing, or monitoring Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this Order and a basis for disciplinary action against Respondent pursuant to the Act.

5. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

6. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

7. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

8. This Order shall automatically terminate upon Respondent's submission of sufficient evidence to the Compliance Division of the Board that Respondent successfully completed the requirements ordered in Ordering Paragraph Nos. 1 and 2.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGES FOLLOW

I, BARRY SANDERS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING
AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I
SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE
ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND,
VERBAL, WRITTEN OR OTHERWISE.

DATED: JANUARY 20, 2017.

Barry Sanders
BARRY SANDERS, M.D.
Respondent

STATE OF _____ §
COUNTY OF _____ §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this
_____ day of _____, 2017.

(Notary Seal)

Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 3 day
of March, 2017.

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Sherif Z. Zafran, MD, President
Texas Medical Board

STATE OF TEXAS
COUNTY OF TRAVIS

I, Jessica Terras certify that I am an official
assistant custodian of records for the Texas Medical Board
and that this is a true and correct Copy of the original, as it
appears on the file in this office.

Witness my official hand and seal of the BOARD.

This 17th Day of May, 2017

Jessica Terras
Assistant Custodian of Records